

**§ 301.7454-2 Burden of proof in foundation manager, etc. cases.**

(a) *Foundation manager.* In any proceeding involving the issue whether a foundation manager as defined in section 4946(b) has “knowingly” participated in an act of self-dealing within the meaning of section 4941, participated in an investment which jeopardizes the carrying out of exempt purposes within the meaning of section 4944, or agreed to the making of a taxable expenditure within the meaning of section 4945 or whether an organization manager (as defined in section 4958(f)(2)) has “knowingly” participated in an excess benefit transaction (as defined in section 4958(c)), the burden of proof in respect of such issue shall be upon the Commissioner.

(b) *Trustee of a black lung benefit trust.* In any proceeding involving the issue whether a trustee of a trust described in section 501(c)(21) has “knowingly” participated in an act of self-dealing within the meaning of section 4951 or agreed to the making of a taxable expenditure within the meaning of section 4952, the burden of proof in respect of such issue shall be upon the Commissioner.

[T.D. 7838, 47 FR 44253, Oct. 7, 1982, as amended by T.D. 8920, 66 FR 2171, Jan. 10, 2001]

**§ 301.7456-1 Administration of oaths and procurement of testimony; production of records of foreign corporations, foreign trusts or estates and nonresident alien individuals.**

Upon motion and notice by the Commissioner and upon good cause shown therefor, the Tax Court or any division thereof shall order any foreign corporation, foreign trust or estate, or nonresident alien individual, who has filed a petition with the Tax Court, to produce, or, upon satisfactory proof to the Tax Court or any of its divisions that the petitioner is unable to produce, to make available to the Commissioner, and, in either case, to permit the inspection, copying, or photographing of, such books, records, documents, memoranda, correspondence and other papers, wherever situated, as the Tax Court or any of its divisions may deem relevant to the proceedings and which are in the possession, custody or control of the peti-

tioner, or of any person directly or indirectly under his control or having control over him or subject to the same common control.

**§ 301.7457-1 Witness fees.**

Any witness summoned for the Commissioner or whose deposition is taken under section 7456 shall receive the same fees and mileage as witnesses in courts of the United States. Such fees and mileage and the expense of taking any such deposition shall be paid by the Commissioner out of any moneys appropriated for the collection of internal revenue taxes, and may be paid in advance.

**§ 301.7458-1 Hearings.**

Notice and opportunity to be heard upon any proceeding instituted before the Tax Court shall be given to the taxpayer and the Commissioner. If an opportunity to be heard upon the proceeding is given before a division of the Tax Court, neither the taxpayer nor the Commissioner shall be entitled to notice and opportunity to be heard before the Tax Court upon review, except upon a specific order of the chief judge.

**§ 301.7461-1 Publicity of proceedings.**

All reports of the Tax Court and all evidence received by the Tax Court and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public; except that after the decision of the Tax Court in any proceeding has become final the Tax Court may, upon motion of the taxpayer or the Commissioner, permit the withdrawal by the party entitled thereto of the originals of books, documents, and records, and of models, diagrams, and other exhibits, introduced in evidence before the Tax Court or any of its divisions; or the Tax Court may, on its own action, make such other disposition thereof as it deems advisable.

DECLARATORY JUDGMENTS RELATING TO QUALIFICATION OF CERTAIN RETIREMENT PLANS

**§ 301.7476-1 Declaratory judgments.**

See the regulations under section 7476 contained in part 1 of this chapter

(Income Tax Regulations) for provisions relating to declaratory judgments, for provisions relating to the qualification of an employee as an “interested party”, and for a requirement that the applicant for an advance determination by the Internal Revenue Service of the qualification of certain retirement plans give notice of such application to interested parties.

[T.D. 7421, 41 FR 20878, May 21, 1976]

**§ 301.7477-1 Declaratory judgments relating to transfers of property from the United States.**

(a) *Petition*—(1) *General rule.* A transferor or transferee of stock, securities of property transferred in an exchange described in section 367(a)(1) may petition the Tax Court for a declaratory judgment with respect to the exchange if—

- (i) The pleading is timely filed; and
- (ii) The exchange has begun before the pleading is filed.

(2) *Pleading timely filed.* The pleading is timely filed if it is filed before the 92d day after the day on which notice of the determination of the Commissioner is sent to the petitioner by certified or registered mail. In the absence of such notice, neither section 7477 nor this section imposes any time limit on the filing of the pleading.

(3) *Beginning of exchange.* An exchange generally shall be considered to begin upon the beginning of the first transfer of property pursuant to the plan under which the exchange is to be made. For rules determining the beginning of a transfer, see § 1.367(a)-1(c)(4).

A transfer shall not be considered to begin with a decision of a board of directors or similar action. A transfer shall be deemed to have begun even though it is made subject to a condition that, if there is a failure to obtain a determination that the exchange is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes, the transaction will not be consummated and to the extent possible the assets transferred will be returned.

(b) *Judgment*—(1) *General rule.* The Tax Court may issue a declaratory judgment or decree within the scope described in section 7477(a)(2) if—

(i) There is a case of actual controversy, and

(ii) The petitioner has exhausted the administrative remedies available to it within the Internal Revenue Service, with respect to a determination or a failure to make a determination.

(2) *Exhaustion of administrative remedies.* The petitioner shall be deemed to have exhausted the administrative remedies available to it within the Internal Revenue Service if—

(i) The petitioner has completed all applicable procedures published in regulations, the statement of procedural rules (26 CFR part 601) or revenue procedures relating to the filing of a request for a ruling under section 367(a)(1) and, if such a ruling has been issued, to the filing of a protest to such a ruling;

(ii) The petitioner has submitted prompt and complete responses to any requests by the Internal Revenue Service for further information; and

(iii) The Internal Revenue Service has had a reasonable time to act upon the request for the ruling, any protest thereto and any additional information submitted in response to any request made therefor by the Internal Revenue Service. If there has been a failure to make a determination, the Internal Revenue Service shall be deemed not to have had a reasonable time to act before the expiration of 270 days after the day on which petitioner properly filed the request for a ruling. In no event shall the Internal Revenue Service be deemed to have had a reasonable time to act if a failure to act has occurred because the petitioner did not proceed with due diligence or because the petitioner has not provided all available information or materials reasonably requested by the Internal Revenue Service.

(3) *Effect of judgment.* The declaratory judgment or decree of the Tax Court, when final under section 7481, shall be binding on the parties to the case for purposes of section 367(a)(1). However, if the facts of the exchange differ from those presented to the Court, the judgment shall be binding only to the extent appropriate under the legal doctrines of estoppel and stare decisis.

(c) *Definitions*—(1) *Exchange described to section 367(a)(1).* For purposes of this